

## **REMARKS**

The Office Action, mailed November 28, 2007, rejected claims 10-14, 16-34, and 58-69 over *Shea* (U.S. Patent No. 6,050,924) under 35 U.S.C. § 102. Claim 15 was rejected over *Shea* in view of *Shum* (U.S. Patent No. 6,585,622) and *Powers* (U.S. Patent No. 5,836,770)<sup>1</sup>. Claims 10-11, 19, 25, 28, 32-33, 58, 61, 63-64, and 66-68 are hereby amended, and claim 27 is canceled. In light of the foregoing amendments and the following remarks, reconsideration and allowance for the above-identified application are now respectfully requested. Claims 10-26, 28-34 and 58-69 are pending.

### **Rejections under 35 U.S.C. § 102**

Claims 10-34 and 58-69 were rejected under § 102(e) as being anticipated by *Shea*. Applicants respectfully traverse.

*Shea* discloses an "exercise system and, more particularly, to an exercise terminal network including exercise terminals usable by an exerciser in a training or rehabilitation program" (Col. 1, ll. 5-8). During use, in one implementation, the "exerciser enters his/her exercise identifier at [an] exercise station terminal" so that processor 201 can "retrieve [] exercise data for the exerciser from the exercise database" to enable the exerciser to begin the workout (Col. 17, ll. 17-22). "The exerciser is provided with a prompt which indicates the exercise ... and total exercise time" (Col. 17, ll. 24-26). Following completion of the exercise at the first exercise station terminal, "the exerciser is provided with an aural and/or visual prompt regarding the next exercise terminal to be used" (Col. 17, ll. 34-36). "The exerciser then

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

proceeds to the stationary bicycle and enters his/her exerciser identifier ... Processor 201 uses the entered exerciser identifier to retrieve exercise data from the exercise database" (Col. 17, ll. 42-46). Each time the exerciser changes an exercise apparatus, the exerciser enters the exerciser identifier and the processor of the exercise apparatus retrieves the exercise program from the exercise database at the central computer 102 (*See* "[t]he database portions are stored in memory 507 . . . of central computer 102 of exercise terminal network 100 (Col. 12, ll. 23-27)).

In contrast, each amended independent claims recites a device that initiates and delivers controls signals to a plurality of exercise devices. In particular, claim 10 recites a "central control unit for controlling a plurality of exercise devices through wireless control signals initiated by the central control unit and delivered to the plurality of exercise devices." Claims 19, 58, 61, 64, and 67 each recites the following similar limitations:

- claim 19: "central control unit for controlling a plurality of exercise devices through wireless control signals initiated at the central control unit and delivered to the plurality of exercise devices;"
- claim 58: "central managing unit for managing the operation of a plurality of exercise devices through exercise programming that is selected and activated at the central managing unit by an exerciser and delivered to the a plurality of exercise devices;"
- claim 61: "central unit configured to initiate and transmit motivational content to a plurality of exercise devices [wherein] the delivery of the exercise programming is the initial communication between the central unit and the plurality of exercise devices;"

- claim 64: "transmitter supported by the receptacle, the transmitter delivering exercise programming initiated by the central unit to the plurality of exercise devices;" and
- claim 67: "transmitter supported by the receptacle, the transmitter delivering exercise programming initiated by the central communications unit to the plurality of exercise devices."

Additionally, amended claims 19 and 58 recite limitations relating to a central unit with which an exerciser can directly interact to select a desired exercise program and have the selected program delivered to the plurality of exercise devices such that the central unit controls the exercise devices one after the other without additional input from the user. In particular, claim 19 recites "wherein said control panel is adapted to enable an exerciser to select one of said plurality of exercise programs at said control panel and activate said control panel such that said wireless transmitter delivers said one of said plurality of exercise programs to said plurality of exercise devices without prior communication from said plurality of exercise devices, wherein said central control unit is adapted to control said plurality of exercise devices in succession without further input from the exerciser." Similarly, claim 58 recites a "central managing unit is adapted to: control an operation of a first exercise device of the plurality of exercise devices upon selection and activation by the exerciser of exercise programming at the central managing unit and, upon completion of the operation of the first exercise device, control an operation of a second exercise device of the plurality of exercise devices without any additional input from the exerciser at the central managing unit or the plurality of exercise devices."

*Shea* neither teaches nor suggests control signals initiated and delivered by a central control unit to a plurality of exercise devices or a central control unit that enables a user to select

desired programming from the control unit and have the programming delivered to the exercise devices as recited in claims 10, 19, 58, 61, 64, and 67. Rather, *Shea* teaches and suggests an exercise system in which a signal is first sent from each of the exercise devices to the central computer and the central computer responds by sending exercise data to the exercise device.

Moreover, amended independent claim 10 recites the central control unit comprising "a receptacle that supports at least one storage medium containing an exercise program to be delivered to the plurality of exercise devices ... and a wireless transmitter ... delivering said exercise program to the plurality of exercise devices." Similarly, independent claims 19, 58, 61, 64, and 67, respectively, recite the following similar limitations:

- claim 19: "transmitter delivering said exercise programs to said plurality of exercise devices using a wireless carrier signal;"
- claims 58, 61: "transmitter delivering exercise programming to the plurality of exercise devices;"
- claim 64: "transmitter delivering exercise programming initiated by the central unit to the plurality of exercise devices;" and
- claim 67: "transmitter delivering exercise programming initiated by the central communications unit to the plurality of exercise devices."

*Shea* neither teaches nor suggests an exercise program that is simultaneously delivered to a plurality of exercise devices. Rather, *Shea* teaches and suggests individual programs being delivered to each exercise apparatus and not a single exercise program being delivered to a plurality of exercise devices.

In asserting that *Shea* teaches a device that delivers "said exercise program to each of the two or more exercise devices," the Office Action stated that "[i]t is therefore inherent that the

same program could be delivered to one or more exercise devices, since the user would be using the same profile data.” However, Applicants respectfully note that inherency is not readily established. For example, as noted in MPEP § 2112, the Examiner must provide rationale or evidence showing inherency. In particular, “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” *In re Rijckaert*, 9 F.3d 1531, 1534 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (emphasis in original). Moreover, the Court of Appeals for the Federal Circuit has noted that “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described by the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a thing may result from a given set of circumstances is not sufficient’.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added).

Finally, “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

With respect to each of independent claims 10, 19, 58, and 61, although *Shea* discloses the use of control signals for controlling the exercise level of a stationary bicycle in accordance with an exercise program (*See* Col. 6, lines 61-63), Applicants respectfully submit that *Shea* neither teaches nor suggests exercise programming that includes control signals and/or motivational content as recited in claims 10, 19, 58, and 61. Specifically, claims 10 and 19 recite exercise programs “comprising (i) motivational content and (ii) control signals synchronized

with said motivational content." Similarly, claim 58 recites "the exercise programming comprising controls signals synchronized with motivational content for controlling an operation of the plurality of exercise devices and simultaneously providing encouragement and/or instruction to exerciser." Likewise, claim 61 recites "the exercise programming includes motivational content."

For at least the foregoing reasons, Applicants respectively submit that pending claims 10-26, 28-34, and 58-69, as amended and presented herein, are neither disclosed in *Shea* nor obvious variations of the method disclosed therein. Accordingly, it is respectfully submitted that claims 10-26, 28-34, and 58-69, as amended and presented herein, overcome the rejections based on Section 102.

### **Rejection under 35 U.S.C. § 103**

The Examiner has rejected claim 15 under § 103(a) as being unpatentable over *Shea* in light of *Shum* and *Powers*. Claim 15 depends from claim 10, and thus incorporates the limitations recited therein. As discussed above, *Shea* fails to disclose or obviate independent claim 10. Furthermore, it has not been established that *Shum* or *Powers* remedy the defects of *Shea*. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. 103(a) of claim 15 be withdrawn.

## CONCLUSION

Applicant respectfully submits, therefore, that the present application is now in condition for allowance. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 11<sup>th</sup> day of February, 2008.

Respectfully submitted,

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